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§§ 257-263; Dec. Dig. § 129.\* 9 Va.-W. Va. Enc. Dig. 691; 14 Va.-W. Va. Enc. Dig. 691.]

**4. Pleading (§ 214\*)—Demurrer—Admissions.**—A demurrer to a pleading admits the facts alleged therein.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 525-534; Dec. Dig. § 214.\* 4 Va.-W. Va. Enc. Dig. 471; 14 Va.-W. Va. Enc. Dig. 328; 15 Va.-W. Va. Enc. Dig. 277.]

**5. Master and Servant (§ 289\*)—Injury to Servant—Contributory Negligence.**—Where the facts are unchallenged, and such that reasonable minds can draw no other inference than that an employee suing for a personal injury was or was not at fault, the court must determine the question of contributory negligence.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 1089, 1090, 1092-1132; Dec. Dig. § 289.\* 9 Va.-W. Va. Enc. Dig. 726; 15 Va.-W. Va. Enc. Dig. 699; 15 Va.-W. Va. Enc. Dig. 660.]

**6. Master and Servant (§ 222\*)—Injury to Servant—Assumption of Risk.**—An employee who operates a dangerous machine in the dark or without sufficient light assumes an open and obvious risk, though he acts on the order of the employer.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 648-651; Dec. Dig. § 222.\* 9 Va.-W. Va. Enc. Dig. 693; 14 Va.-W. Va. Enc. Dig. 692; 15 Va.-W. Va. Enc. Dig. 651.]

Error to Corporation Court of City of Alexandria.

Action by one Recker against the Southern Railway Company. There was a judgment sustaining a demurrer to the original and amended declarations, and plaintiff brings error. Affirmed.

*S. G. Brent* and *H. W. Smith*, both of Alexandria, for plaintiff in error.

*Francis L. Smith*, of Alexandria, for defendant in error.

WHITE *v.* AMERICAN NAT. LIFE INS. CO.

June 12, 1913.

[78 S. E. 582.]

**1. Pleading (§ 214\*)—Demurrer to Evidence—Admissions.**—A party who demurs to the evidence of the adverse party thereby admits the truth of the evidence of the adverse party and all just inferences that the jury may properly draw therefrom, and waives all of his own evidence in conflict therewith, and all inferences, though not in conflict, which do not necessarily result therefrom.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 525-534; Dec. Dig. § 214.\* 4 Va.-W. Va. Enc. Dig. 522; 14 Va.-W. Va. Enc. Dig. 331; 15 Va.-W. Va. Enc. Dig. 282.]

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

**2. Contracts (§ 141\*)—Ratification of Fraudulent Acts—Burden of Proof.**—A party admitting that the adverse party was induced by fraud to make a contract has the burden of establishing by clear evidence that the adverse party, after the discovery of the fraud, waived it and ratified the contract, to defeat a rescission.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 461, 1760, 1761, 1785; Dec. Dig. § 141.\* 6 Va.-W. Va. Enc. Dig. 482; 15 Va.-W. Va. Enc. Dig. 426.]

**3. Evidence (§ 67\*)—Presumptions—Continuance of Condition—Principal and Agent.**—The relation of principal and agent once established presumptively continues, in the absence of proof to the contrary.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 87, 88, 103; Dec. Dig. § 67.\* 11 Va.-W. Va. Enc. Dig. 228; 14 Va.-W. Va. Enc. Dig. 839; 15 Va.-W. Va. Enc. Dig. 820.]

**4. Corporations (§ 80\*)—Fraud Inducing Purchase of Corporate Stock—Rescission—Delay.**—Mere delay of a purchaser of corporate stock to rescind after the discovery of the fraud, inducing the purchase resulting from reasonable expectation on his part that the corporation will grant him proper relief, will not estop him from rescinding on the ground of the fraud, rights of creditors or innocent third persons not intervening, and the position of the corporation not being injuriously affected by the delay.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. §§ 244, 246-264, 1407, 1407½; Dec. Dig. § 80.\* 12 Va.-W. Va. Enc. Dig. 827.]

**5. Corporations (§ 80\*)—Purchase of Stock Induced by Fraud—Waiver.**—A purchaser of corporate stock who before the discovery of the fraud inducing the purchase gives to the president of the corporation a proxy to represent him at a stockholders' meeting does not thereby waive his right to rescind for the fraud.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. §§ 244, 246-264, 1407, 1407½; Dec. Dig. § 80.\* 12 Va.-W. Va. Enc. Dig. 809.]

**6. Corporations (§ 90\*)—Purchase of Corporate Stock—Fraudulent Representations—Ratification.**—Evidence held not to show that one induced by fraud to purchase corporate stock ratified the purchase or acquiesced therein after the discovery of the fraud.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. §§ 245, 383-419; Dec. Dig. § 90.\* 12 Va.-W. Va. Enc. Dig. 908.]

Error to Circuit Court, Mathews County.

Action by the American National Life Insurance Company against C. C. White. There was a judgment for plaintiff, and defendant brings error. Reversed.

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

*Buford, Lewis & Peterson*, of Lawrenceville, and *J. Boyd Sears*, of Mathews, for plaintiff in error.

*Harper & Goodman*, of Lynchburg, for defendant in error.

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MURGUIONDO *v.* NOWLAN'S EX'R et al.

June 12, 1913.

[78 S. E. 600.]

**Wills (§ 111\*)—Execution—Place of Signing.**—Signing of a will, required by Code 1904, § 2514, to be "in such manner as to make it manifest that the name is intended as a signature," need not necessarily be at the end, and so in case of an attested holographic will the signature of testator affixed in the presence of the witnesses, in the margin of the last page, nearly opposite the end, is sufficient.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 267-275; Dec. Dig. § 111.\* 13 Va.-W. Va. Enc. Dig. 730.]

Error to Chancery Court of Richmond.

Will of Bettie W. Nowlan, offered by Robert E. Macomber, executor, was admitted to probate, and Mary de Murguiondo, one of the contestants, brings error. Affirmed.

*R. R. Hicks*, of Norfolk, and *H. M. Smith*, of Richmond, for plaintiff in error.

*Meredith & Cocke* and *Leake & Buford*, all of Richmond, for defendants in error.

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KINCHELOE et al. *v.* GIBSON'S EX'X.

June 12, 1913.

[78 S. E. 603.]

**1. Appeal and Error (§ 220\*)—Objections in Lower Court—Report of Referee.**—Questions not raised by objections to commissioner's report stating an account in the lower court will not be noticed on appeal.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1325-1332; Dec. Dig. § 220.\* 1 Va.-W. Va. Enc. Dig. 565; 14 Va.-W. Va. Enc. Dig. 90; 15 Va.-W. Va. Enc. Dig. 64.]

**2. Executors and Administrators (§ 483\*)—Expenditures—Taxes.**—Taxes accruing before the death of a testator, leaving practically all his realty to life tenants with the remainder over, are properly paid by the executrix, and she is entitled to credit therefor.

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.